

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.12.101,)	ON PROPOSED AMENDMENT
definitions and ARM 36.12.107, filing fee)	AND ADOPTION
refunds and the adoption of New Rule I,)	
objection to application)	

To: All Concerned Persons

1. On November 5, 2007, at 9:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Department of Public Health and Human Services Auditorium, 111 North Sanders, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 12, 2007, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-5918, or e-mail to kovercast@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (4) remain the same.

(5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, including criteria addendum form No. 600A, 600B, or 600ACF, or application to change a water right, Form No. 606, including criteria addendum Form No. 606A, 606B, 606ASW, or 606T.

(a) For the purposes of New Rule I, "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, and 85-2-408, MCA.

(6) through (46) remain the same.

(47) remains the same but is renumbered (48).

(48) remains the same but is renumbered (49).

(49) remains the same but is renumbered (47).

(50) through (79) remain the same.

AUTH: 85-2-308, MCA

IMP: 85-2-308, MCA

36.12.107 FILING FEE REFUNDS

(1) through (4) remain the same.

(5) If an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the fee required for the correct form, pay the difference due, or be entitled to a refund; if overpayment is made.

(6) If a water right application is withdrawn within 30 days after the objection deadline, the Objection to Application filing fee will be refunded.

(7) A refund of the Objection to Application filing fee will not be authorized if an objector does not correct the deficiencies identified in the Objection Deficiency Notice by the deadline specified in the notice.

(8) With the exception of ARM 36.12.107(6), a refund of the Objection to Application filing fee will not be authorized.

AUTH: 85-2-302, MCA

IMP: 85-2-302, MCA

REASONABLE NECESSITY: The amendments are necessary to update definitions and to clearly set forth when a refund of filing fees will be authorized.

4. The rule proposed to be adopted provides as follows:

NEW RULE I OBJECTION TO APPLICATION (1) A person objecting to a proposed application under 85-2-308, MCA, must file an objection to an application on Form No. 611, Objection to Application, which can be obtained from the department, and must comply with the requirements set forth in this rule.

(2) A separate Objection to Application must be filed for each water right application.

(3) Persons owning separate water rights must each file their own Objection to Application form. For example, if person A owns a water right and B owns a different water right and both want to file an objection to the same application, owner A and owner B must each file separate objections.

(4) Co-owners (owners of a water right that is not split between the owners) of an undivided water right may file one Objection to Application form.

(5) Only a person whose signature appears on a valid Objection to Application will be allowed to participate in an administrative hearing. An entity filing objections must be represented by legal counsel in any administrative hearing before the department. One co-owner cannot represent another co-owner (see unauthorized practice of law 37-61-201, MCA).

(6) All corporations, limited liability companies, trusts, partnerships, associations, and groups of individuals (unless each person appears pro se) must be represented by an attorney licensed to practice in the state of Montana in order to participate in a formal proceeding before the department, including but not limited to a contested-case proceeding. This list is not exhaustive (see 37-61-201, MCA). Failure to retain required legal representation will result in dismissal of the Objection to Application.

(7) An Objection to Application is timely if the postmark date on the form is on or before the objection deadline stated in the public notice of the application.

(8) An Objection to Application filed with the department before an application has been published will not be accepted and will be returned.

(9) Upon receipt of an Objection to Application or response to an Objection Deficiency Notice, the department will place the envelope postmark date on the form. If the postmark date is not legible, the department will assign the date as two days prior to the department's receipt of the objection form. An objector is solely responsible for ensuring timeliness, a legible postmark, and filing of the objections.

(10) Fax or electronic mail (e-mail) submissions of the Objection to Application will not be accepted.

(11) An Objection to Application is correct and complete if it includes the following legible information:

(a) filing fee;

(b) objector's name and mailing address;

(c) name of the water right applicant;

(d) water right application number;

(e) if an objector is claiming the objector's water right will be adversely affected if the application were granted, the objector must provide the objector's department-assigned water right number. If the water right was exempt from the statewide water right filing requirements and is not on record with the department, the objector must provide the following information:

(i) date of first use;

(ii) name of the appropriator;

(iii) source;

(iv) type of use (stock or domestic);

(v) the flow rate and volume of water used;

(vi) the point of diversion; and

(f) facts indicating that the application does not meet one or more of the applicable criteria set forth in 85-2-302, 85-2-311, 85-2-316, 85-2-402, 85-2-407, or 85-2-408, MCA. The facts provided must specifically describe why or how one or more of the criteria are not met;

(g) facts explaining how the objector has standing to object. To have standing, an objector must have property, water rights, or other interests that would be adversely affected were the application granted. The objection must describe how the objector's property, water rights, or interests will be adversely affected if the water right application were granted; and

(h) notarized signature of the objector or the objector's legal representative. If a representative of the objector other than objector's attorney signs the Objection to Application affidavit, the representative shall state the relationship of the representative to the objector on the form and provide documentation demonstrating the authenticity of that relationship, such as a copy of a power of attorney.

(12) An objection that is deemed correct and complete and valid pursuant to 85-2-308(3) and (6), MCA, may proceed to an administrative hearing. The administrative hearing will be limited to the criteria objected to in the objection. An objector may participate in the administrative hearing only on the criteria to which the objector specifically objected and which is determined valid by the department.

(13) The department will mail notice to the objector of any deficiencies in the objection. The information requested in the Objection Deficiency Notice must be postmarked or hand delivered to the department within 15 days from the date on the Objection Deficiency Notice.

(14) If the objector does not correct the deficiencies as determined by the department by the deadline, the objection will be terminated without further notice.

(15) The department will document a valid objection by completing an objection validity form.

(16) The department will determine on which criteria the objector has filed a valid objection.

(17) An objection may be withdrawn at any time in writing. A party withdrawing an objection will not be considered a party by the department to any hearing that may be held by the department.

(18) An applicant is not required to meet a water quality criterion when a valid water quality objection is not raised or is withdrawn.

(19) Private agreements between applicants and objectors which provide for the withdrawal of objections and include conditions that must be met by an applicant or objector may not be recognized by the department or included in a granted application. The department will only place a condition on a granted application if the department determines the condition is necessary to meet the application criteria.

AUTH: 85-2-308, MCA

IMP: 85-2-308, MCA

REASONABLE NECESSITY: This rule is necessary to delineate the components of a correct and complete objection for both applicants and objectors and is required by 85-2-308(5), MCA. The rules also help to ensure that applicants, objectors, and the department understand how receipt of objections to applications will be administered.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than November 5, 2007.

6. Jan Langel, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (5) above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on July 20, 2007.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State September 24, 2007.